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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports due in 1996

Addendum

RUSSIAN FEDERATION*

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[5 December 2001]

* For the initial report of Russian Federation, see CAT/C/5/Add.11; for its consideration, see CAT/C/SR.28 and 29 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 115-149.

For the second periodic report, see CAT/C/17/Add.15; for its consideration, see CAT/C/SR.264, 265 and 268 and Official Records of the General Assembly, Fifty-second session, Supplement No. 44 (A/52/44), paras. 31-43.

The information submitted by the Russian Federation in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in document HRI/CORE/1/Add.52/Rev.1.

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I. INTRODUCTION

1. This report is submitted under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention) and was drafted in accordance with the general guidelines concerning the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14).

2. The report covers the period 1996-2000 and contains a description of developments since the submission of the second periodic report in 1996 (CAT/C/17/Add.15).

II. INFORMATION RELATING TO EACH ARTICLE OF PART I OF THE CONVENTION

Article 1

3. The reform and improvement of Russian law are being conducted in accordance with the constitutional principle of the primacy of human rights.

4. The Constitution of the Russian Federation provides that "No one shall be subjected to torture, violence or other cruel or degrading treatment or punishment" (art. 21).

5. Article 15, paragraph 4, of the Russian Constitution provides that universally recognized principles and norms of international law and international agreements of the Russian Federation form an integral part of the country's legal system. Being constitutional, they have direct effect and are applicable throughout the Federation.

6. Article 15 of the Constitution was amplified by the adoption on 23 October 1996 of the Judicial System of the Russian Federation Act, which provides that uniformity of the judicial system - one of the guarantees of genuine justice - is ensured by, inter alia, "the application by all courts of the Constitution of the Russian Federation, constitutional Acts, universally recognized principles and norms of international law and international agreements of the Russian Federation".

7. The Criminal Code of the Russian Federation (CCRF) also refers to universally recognized principles and norms of international law as a source of a number of provisions on criminal liability (CCRF, art. 1, para. 2).

8. The CCRF contains a number of articles prescribing criminal liability for any type of unlawful act involving physical or psychological abuse of human beings. Russian criminal law contains no definition as such of the concept of "torture". The term "torture" does, however, appear in a number of articles. In such a case, the law-enforcement agent bases himself on the definition of the concept of "torture" contained in the Convention.

Article 2

9. The new CCRF came into effect on 1 January 1997, i.e. subsequent to the consideration in November 1996 of the second periodic report of the Russian Federation on compliance with the Convention.

10. The CCRF contains the concept of "torture" as an aggravating circumstance in the crimes referred to in article 117 (Systematic or brutal violence), paragraph 2 (e), and article 302 (Coercion to give testimony), paragraph 2. Article 302, paragraph 2, was included in the CCRF in connection with the ratification of the Convention and with article 15, paragraph 4, of the Constitution, pursuant to which "universally recognized principles and norms of international law and international agreements of the Russian Federation form an integral part of the country's legal system".

11. It should be noted that the CCRF provides for criminal liability not only in the event of an official's use of torture to compel someone to testify (op. cit., art. 302, para. 2) but also in the event of torture in a domestic context (art. 117, para. 2 (e)). Hence, on the one hand Russian criminal law is based on the Convention's definition of the term "torture" and on the other, in application of the possibility contained in article 1, paragraph 2, of the Convention, it expands that definition by extending it to all subjects of criminal law, thereby ensuring fuller protection of human rights.

12. The CCRF contains a number of other rules aimed at further implementation of the provisions of the Convention, for example, incitement to suicide through harsh treatment or systematic degradation (art. 110), deliberate infliction of serious injury to health through particular cruelty, bullying or ill-treatment (art. 111, para. 2 (b)), battery (art. 116), kidnapping (art. 126), unlawful deprivation of liberty (art. 127), unlawful internment in a psychiatric hospital (art. 128), hostage-taking (art. 206), abuse of official powers (art. 285), violation, involving humiliation, degradation or violence, of the armed forces' regulations on relations between military personnel who are not hierarchically distinct (art. 335). All in all, quite severe penalties are provided for all these crimes.

13. Among the principles of the CCRF that reflect international standards and are of particular importance in practical law-enforcement is humanity (CCRF, art. 7). Humanity manifests itself in the combination of two factors: the safeguarding of people from crimes against their lives, health, dignity, rights and freedoms or property (art. 7, para. 1), and the stipulation that punishment and other measures under criminal law may not have as their purpose the causing of physical suffering or the degradation of the individual (ibid., para. 2). Article 7, paragraph 2, of the CCRF prohibits punishment that is cruel, painful or degrading.

14. The principle of humanity has been incorporated in a number of articles of the CCRF. It has further been manifested in the establishment by the State, as required by article 4 of the Convention, of criminal liability for the use of torture.

15. In addition to the entry into force of the CCRF, the Russian Federation is pursuing legislative activity aimed at the adoption of regulations to make Russian law an effective instrument for the discharge of the obligations assumed under the Convention. In addition, it is amending and supplementing a variety of existing laws and subordinate legislation, while other instruments have been repealed.

16. The Court Bailiffs Act was adopted in 1997. In giving these officials wide powers to maintain order in courts, it strictly regulates the conditions and limits of the use of force, special restraining devices and firearms. In particular, it prohibits the use of special restraining devices against persons who have committed unlawful acts of a non-violent nature and, except in cases of armed resistance or of the commission of a group or armed attack endangering human life, against women who are visibly pregnant, persons who clearly have a disability or minors (art. 15).

17. As redrafted, article 4 of the Detention of Suspects and Accused Persons Act (No. 117-FZ) sets out the principles for the detention of such persons. Those principles include: observance of the law; the equality of all citizens before the law; humanity; respect for the dignity of the individual in accordance with the Constitution of the Russian Federation, the principles and norms of international law and international agreements of the Russian Federation. The article also says that detention "shall not be accompanied by torture or other acts intended to cause physical or mental suffering to suspects or accused persons who are under detention".

18. The Police Act of the RSFSR (Amendment and Supplementation) Act was adopted on 31 March 1999. The changes introduced include in particular the insertion in article 5, paragraph 2, of the Police Act of the following provision: "The police shall not have recourse to torture, violence or other cruel or degrading treatment."

19. In its decision No. 1, "On judicial practice in murder cases (CCRF, art. 105)", dated 27 January 1999, the Plenum of the Supreme Court of the Russian Federation stated that the factor of particular cruelty referred to in the qualification of murder under CCRF, article 105, paragraph 2 (e), "is present, in particular, in cases in which, prior to the taking of the victim's life or in the course of the commission of the murder, use is made of torture or systematic or brutal violence or the victim is mocked, or in which the murder is committed by a means of which the culprit is aware that it will cause the victim particular suffering".

20. In one of its decisions, the United Nations Committee against Torture expressed concern that a number of presidential decrees permitting suspects to be detained for up to 30 days might create conditions conducive to the violation of detainees' rights. That problem has now been resolved. Presidential Decree No. 593 of 14 June 1997 repealed Presidential Decree No. 1226, dated 14 June 1994, entitled "Urgent measures to protect the population from banditry and other manifestations of organized crime", and section 2 of Decree No. 1025, dated 10 July 1996, entitled "Urgent measures to strengthen the law and order and to intensify the fight against crime in the city of Moscow". In 1997, the Constitutional Court of the Russian Federation recognized

as unconstitutional section 1, paragraph b, of the Temporary Exceptional Measures to Combat Crime Act of the Republic of Moldova, which had given the Republic's Ministry of Internal Affairs the right to hold in administrative detention for up to 30 days, subject to a procurator's consent, persons involved in the activity of organized criminal groups.

21. The Russian Federation is continuing to work actively for the conclusion of international agreements elaborating on the provisions of the Convention and aimed at improving interaction between CIS States regarding the prohibition of torture.

22. The Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms was concluded on 26 May 1995 and ratified at Minsk in 1998. Article 3 of the Convention reads as follows: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

23. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment came into force for Russia on 1 September 1998.

Article 3

24. In accordance with universally recognized principles and norms of international law, the provisions of international agreements and the Constitution of the Russian Federation, Russian penal legislation is based on strict observance of guarantees of protection against torture, violence and other cruel or degrading treatment of convicted persons (Code for the Execution of Criminal Penalties (CECP), art. 3, para. 3). These fundamental principles are observed throughout the territory of the Russian Federation (CECP, art. 6, para. 1).

25. People who have committed crimes are equal before the law and criminally liable irrespective of their sex, race, nationality, language, origin, property or official status or other circumstances. That is stated in article 4 of the Russian Criminal Code.

26. It is particularly emphasized in the Criminal Code that neither punishment nor other measures under criminal law may have as their purpose the causing of physical suffering or the degradation of the individual.

27. Implementation of the above-mentioned legal rules is the basis of all the Russian Federation's international agreements regulating expulsion, return or extradition of persons to another State when there are grounds for thinking that they will be at risk of being tortured there. That is borne in mind by the Russian law-enforcement agencies that deal with such matters.

28. In assuming on 25 October 1999 obligations under the European Convention on Extradition, the Russian Federation entered a reservation to the effect that it reserved its right to refuse extradition "if there are serious grounds to believe that the person whose extradition is requested was or will be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment" (European Convention on Extradition, Additional Protocol and Second Additional Protocol Thereto (Ratification) Act, art. 1, para. (b) (2)).

29. The Russian Federation has concluded bilateral extradition agreements with the People's Republic of China and India; they came into force on 10 January 1997 and 30 May 2000 respectively. Both these agreements contain a provision (art. 20) stating that they are without effect on the contracting countries' rights and obligations under other international treaties to which they are parties. Article 4 (2) of the Extradition Treaty with India contains a provision on extraterritorial jurisdiction, the need for which was mentioned in the conclusions and recommendations of the Committee against Torture. In addition, article 14 of the same Treaty provides that extradition may be refused if the offence for which extradition is requested is punishable by death under the law of the requesting State but not under that of the requested State. Hence, these agreements do not prevent the discharge by Russia of its obligation under article 3 of the Convention.

30. Similar agreements on the handing-over of persons sentenced to deprivation of liberty to serve their sentences have been concluded with Turkmenistan (1995), Georgia (1996), Cyprus (1996), Madagascar (1997) and Tunisia (1987).

Article 4

31. The CCRF contains a number of articles according to which the use of torture is an indicium of an offence. These legal rules were formulated taking into account the differences between the author and victim of an offence.

32. For example, article 117, paragraph 2 (e), of the CCRF determines liability for "systematic or brutal violence" (the causing of physical or psychological suffering through the systematic administration of blows or other violent acts) that is committed with the use of torture; article 302, paragraph 2, determines liability for coercion of a suspect, accused person, victim or witness to testify or of an expert to give a conclusion through violence, bullying or torture; article 309 determines liability for suborning or compelling a person to give or refrain from giving testimony or to mistranslate when those offences are committed with the use of life- or health-threatening violence. Likewise, articles 285 and 286 determine officials' liability for abuse or exceeding of their powers that has serious consequences.

33. The use of torture is viewed with regard to these offences as a circumstance justifying an increase in the penalty. For example, the applicable penalties are: for systematic or brutal violence committed with the use of torture - deprivation of liberty for a period of 3 to 7 years (CCRF, art. 117, para. 2 (e)); coercion to give testimony, combined with the use of violence, bullying or torture - deprivation of liberty for a period of 2 to 8 years (art. 302, para. 2); exceeding of official powers, when accompanied by violence or threats of violence or the use of a weapon or special restraining devices or resulting in serious consequences - deprivation of liberty for 3 to 10 years (art. 286).

34. It must be emphasized that liability under paragraph 1 of article 117 of the CCRF (causing of physical or psychological suffering through the systematic administration of blows or other violent acts) arises in the absence of consequences in the form of the deliberate infliction of serious or moderate damage to health.

35. When such consequences do arise, and in other cases of the commission of a crime with recourse to torture (when there is no direct reference to that circumstance in the article in question), liability is incurred for the set of offences concerned and the sentence is fixed in accordance with article 69 of the CCRF by partially or completely summing the penalties applicable to the individual crimes (in which instance the maximum period of deprivation of liberty may be as long as 25 years). In other words, liability is greatly increased for any crime involving the use of torture.

36. In the light of the foregoing, we are of the opinion that designating torture as a general aggravating circumstance would not strengthen but, on the contrary, weaken individuals' protection under criminal law since the sentence that could be imposed for what would then be a single crime would be milder (punishment only being possible within the limits of the specific article concerned) than that imposable for a set of crimes, i.e. according to the rules in article 69 of the CCRF. It should also be borne in mind that article 63, paragraph 2, of the CCRF provides that if an aggravating circumstance (in this instance, torture) is recognized as an indicium of a crime in any article contained in the Special Part of the CCRF, it cannot be taken into account a second time in sentencing.

37. The CCRF also determines liability for: the prosecution of a party known to be innocent (art. 299); unlawful short-term or pre-trial detention having serious consequences (art. 301, para. 3); falsification of evidence that results in serious consequences (art. 303, para. 3); utterance of a knowingly unjust verdict, decision or other judicial instrument (art. 305); violent suborning or coercion to give or not to give testimony or to give an inaccurate translation (art. 309, paras. 3 and 4).

38. Article 203 of the CCRF determines the criminal liability of chiefs or officials of private security or detective services who, in exceeding their powers, use or threaten to use violence.

39. In examining the question of criminal prosecution of officials (including officials of law-enforcement and judicial organs), it should be borne in mind that article 286 of the CCRF penalizes action that is ultra vires. It is of relevance in this regard whether the act is committed with violence or the threat of violence or has serious consequences. When those circumstances obtain, the offence counts under Russian criminal law as a serious one and is punishable by deprivation of liberty for 3-10 years, combined with a ban on occupancy of the post or performance of the official functions in question for up to 3 years.

40. The summary data on numbers of convictions provided by the Office of the Procurator-General of the Russian Federation's statistical department reveals the following:

Number of convictions	1996	1998	1999
Under CCRF, art. 286 (Action ultra vires)	895	989	1 149
Under CCRF, art. 301 (Unlawful short-term or pre-trial detention)	5	4	18
Under CCRF, art. 302 (Coercion to give evidence under torture)	8	11	7
Under CCRF, art. 128 (Unlawful internment in a psychiatric hospital)	-	16	5

41. Within the system of the Russian Ministry of Internal Affairs, supervision of officials' compliance with the law is exercised by the heads of internal affairs agencies, the agencies' security units and the staff inspectorate.

42. The security units' main functions are:

(a) To detect, prevent and suppress breaches of the law planned, prepared or committed by officials of internal affairs agencies of the Russian Federation;

(b) To work out measures for ensuring security and strengthening compliance with the law in internal affairs agencies and units;

(c) To organize State protection of officials of internal affairs agencies and of members of their families;

(d) To make internal investigations into serious crimes and crimes that have provoked wide public reaction committed by officials of internal affairs agencies, as well as into professional misconduct involving law-breaking.

43. Among the forms of official response to violation of citizens' rights by officials is the examination of complaints and other types of communication.

44. During the period 1998-2000, internal affairs agencies' security units received 78,219 complaints and communications from citizens against the actions of employees of the agencies. The citizens' submissions led to the making of 44,839 internal investigations and, as a result of the investigations, the calling to various forms of account of 17,193 agency employees. Of these employees, 4,598 were dismissed and 1,134 demoted. A total of 10,374 files were submitted to the procurator's service and criminal proceedings were opened in 5,093 of these cases.

45. In addition to these efforts, the Ministry of Internal Affairs is developing a programme for a multilevel study of employees' suitability for service in internal affairs agencies.

46. The United Nations Committee against Torture has expressed concern in one of its decisions that new recruits to the Russian armed forces are harshly treated by serving personnel.

47. Breaches of the regulations on personal relations and physical abuse of subordinates unfortunately continue to be serious problems in Russia's Armed Forces and other military units.

48. The CCRF provides for liability for: violations involving humiliation, degradation or bullying of, or violence against the victim of the armed forces' regulations on relations between hierarchically equal personnel (op. cit., art. 335), and the insulting of one member of the armed forces by another during or in connection with the discharge of military duties (art. 336).

49. With a view to the detailed study of the problem of non-regulation behaviour within the armed forces, the Office of the Chief Military Procurator has, together with the Office of the Procurator-General of the Russian Federation's institute for research into the consolidation of

law and order, made a sociological study of latent criminality and its contributory factors. Analysis of compliance with the law in the Army and Navy has shown that the persistence of misconduct is closely connected with other negative phenomena: evasion of military service, commanders' covering-up of offences, and breaches of the law in calling people up for military service.

50. A systematic approach has been adopted towards resolving the problem of crime. It has resulted in the development of new forms of surveillance enabling crime to be dealt with pro-actively. These include the universal introduction in detachments and units of regular, large-scale procuratorial checks constituting the first stage in a system of measures aimed at increasing the efficiency of the legal system's reaction to misconduct.

51. In 1997, checks of this kind resulted in the recording of 712 cases of breach of the regulations on personal relations (as against 762 in 1996) and of 170 cases of abuse of authority involving physical abuse. Appropriate measures were taken against the guilty parties. In 1997 alone, criminal proceedings were opened in 88 cases and resulted in the conviction by military courts of 46 members of the armed forces. In the current year, there have been 29 checks, resulting in the opening of 128 criminal cases, including 51 for breach of the regulations on personal relations and 77 for evasion of military service; 248 instances of concealment of offences have been formally registered, 9 unlawful decisions not to open criminal proceedings have been repealed and 54 recommendations for preventing offences have been made to senior officers.

52. In 1998, as part of its systematic offensive against misconduct and evasion of duty, the Chief Military Procurator's Office made a nationwide appeal to deserters voluntarily to contact the authorities. From the very beginning of this "Operation Confession", confirmation was obtained that most deserters evaded military service because of difficult personal circumstances, including problems resulting from non-regulation conduct by others.

53. The Chief Military Procurator's Office proposed that they should be amnestied and on 10 June 1998 the State Duma of the Federal Assembly of the Russian Federation formally decided that that should be done. Over 11,000 military personnel made confessions and the majority of them were released from criminal liability.

54. Simultaneously, checks were made on compliance with the law in calling citizens up for military service, since experience of procuratorial investigations had shown that enrolling people with mental or physical handicaps contributes towards not only breaches of the military's regulations on personal relations but also other serious offences involving in particular shootings on guard duty and suicides. As a result of these checks, which were conducted in concert with local procurators throughout the Russian Federation during the 1998 spring and autumn call-ups, the decisions of call-up boards concerning 850 people who were either medically unfit for, or otherwise exempt from military service were overturned. In 1999, unlawful call-up was prevented in over 1,300 individual cases. Following procuratorial supervision of compliance with the law during the spring 2000 call-up campaign, more than 260 procuratorial recommendations and 280 reports on violations were made to the competent authorities. In August 2000, at a coordination meeting of heads of military units and law-enforcement agencies

held at the Chief Military Procurator's Office with a view to preventing the call-up of persons unfit for military service, decision was taken to initiate appropriate changes in the Military Obligations and Military Service Act.

55. The novelty of the approach being taken to ensuring the rights of military personnel is further apparent from the fact that the campaign against misconduct is now being seen in close conjunction with the task of tak.ng practical steps to provide genuine protection for the victims of unlawful acts. In March 1999, a meeting of senior officials from the Chief Military Procurator's Office mapped out a plan for moving this issue from the realm of theory to that of practice. In implementation of this plan, drafts have been elaborated of: instructions on measures to ensure the safety of military personnel who contribute towards criminal justice and the protection of the rights and lawful interests of victims of unlawful acts; a Ministry of Defence order for the application of those instructions. Proposals have been submitted to the Russian Government and the State Duma for the adoption of relevant federal laws and the amendment and supplementing of the Code of Criminal Procedure of the Russian Socialist Federal Soviet Republic (RSFSR).

56. Since the causes of "hazing" cannot be eliminated without the full pooling of the efforts of the command structure, the Military Procurator's Office, government bodies and voluntary and human-rights organizations, the Chief Military Procurator's Office is doing a great deal to improve coordination between these entities and to give greater publicity to the checks and other supervisory measures. On 28 February 2000, an interdepartmental task force on matters to do with non-regulation behaviour and related evasion of military service was set up under its leadership. It comprises representatives of all sections of the Russian federal authorities that include military units. The task force is responsible for the permanent coordination of the day-to-day activity of all the departments concerned.

57. On 22 December 1998, a round-table meeting was held at the offices of the Chief Military Procurator. It was attended by representatives of the Ministry of Defence, associations of service personnel's relatives and the mass media and was devoted to the intensification of joint efforts to eradicate the negative phenomena in question. The experience gained from this meeting was used in organizing a conference held at the same venue on 24 December 1999 on improving the work of military commanders and the Military Procurator's Office to prevent death and injury to military personnel from causes including unlawful acts by commanders and officers. It is planned to hold in December 2000, again at the offices of the Chief Military Procurator, a conference to be attended by representatives of voluntary associations in the federal armed forces, other forces and military formations, of human-rights bodies and of the mass media. It will discuss the improvement of interaction in the interests of maintaining law and order and discipline in military units.

58. Coordination meetings at the offices of the Chief Military Procurator between the heads of ministries and government departments having military formations are now a part of law-enforcement practice. The decisions taken at these meetings are materialized in measures intended to have a comprehensive effect on the causes and conditions that give rise to breaches of the regulations governing relations between service personnel.

59. Interdepartmental task forces on combating non-regulation behaviour and evasion of military service operate in both the Chief and local military procurators' offices.

60. The coordination activity includes the study, pooling and dissemination of the experience of commanders of military units having a long history of freedom from non-regulation behaviour.

61. Military procurators have made arrangements for conscripts to have their rights to protection against unlawful acts by fellow service personnel or officials explained to them at military commissariats and call-up centres.

62. Confidential telephone hotlines have been set up in the offices of the Chief and local military procurators to ensure prompt reaction to evidence of non-regulation behaviour and other offences.

63. On 26 June 2000, the Deputy Procurator-General of the Russian Federation and the Chief Military Procurator issued Order No. 192 on reinforcement of supervision of compliance with the law in criminal investigations into cases of death or injury of military personnel. The Office of the Chief Military Procurator now includes a subunit that deals exclusively with supervision of compliance with the law in investigations into non-regulation behaviour.

64. The above measures are proving effective not just in curbing the steady increase of recent years in such behaviour, but also in substantially reducing the frequency of its occurrence. For example, while incidents of this kind increased in 1997 and 1998 by 24 per cent and 10 per cent respectively, in 1999, the number of breaches of service regulations on personal relations recorded by military procurators fell by 12.2 per cent, the first decline in five years. The number of persons who committed offences of this kind dropped by 10.9 per cent.

65. Over 4,800 procuratorial checks were carried out during the period January-June 2000. They revealed more than 6,300 breaches of the law and resulted in the restoration of the rights of 35,000 members of the armed forces.

66. Active use is made of criminal proceedings in combating breaches of the regulations on personal relations. Cases against 1,164 members of the armed forces found committing this type of offence were sent to the courts between January and June 2000. More than 400 officials are being prosecuted for physical abuse of subordinates.

67. The outcome of these efforts has been a decline of 0.9 per cent in the number of breaches of service regulations on personal relations recorded in the first half of the current year. The number of victims of such breaches and of physical abuse has fallen by 38.7 per cent.

68. However, the upward trend in the number of in-service offences involving physical abuse has not been halted. By comparison with the same period of 1999, the number of such incidents rose by 14.7 per cent.

Article 5

69. Under article 11 of the CCRF, all persons who commit offences in the territory of the Russian Federation are liable for their actions under Russian law. Unlike article 4 of the RSFSR Criminal Code, the provisions of this article spell out in greater detail the circumstances in which an offence is deemed to have been committed in the territory of the Russian Federation.

70. The criminal liability of diplomatic representatives of foreign States and other beneficiaries of immunity who commit offences in the territory of the Russian Federation is determined in accordance with the norms of international law (art. 11, para. 4).

71. Under article 12, paragraph 3, of the CCRF, foreign citizens and stateless persons not permanently resident in the Russian Federation who commit offences outside its borders are criminally liable if their crime is directed against the interests of the Russian Federation; in cases provided for by an international treaty of the Russian Federation.

Article 6

72. The criminal prosecution of persons who commit offences such as those indicated in article 4 of the Convention is conducted in strict accordance with the rules of the law of criminal procedure. Such persons may be held in pre-trial detention only on the basis of the requirements of article 96 of the RSFSR Code of Criminal Procedure. When authorizing pre-trial detention, the Procurator must acquaint himself thoroughly with all the records of a case and, if necessary, personally interview the suspect or the accused. The prolongation of pre-trial detention beyond the statutory limit is permitted only when it is not possible to complete the investigation and when there are no grounds for modifying the preventive measure. Upon expiry of the statutory limit for pre-trial detention (i e. six months in criminal cases if it is not possible to complete the investigation and when the individual concerned has committed a serious or particularly serious offence; or, exceptionally, one year if authorized by the Deputy Procurator-General or 18 months if authorized by the Procurator-General), the suspect or the accused must be released from the place of detention as stipulated in article 97 of the RSFSR Code of Criminal Procedure.

Article 7

73. If a person suspected of having committed an offence under article 4 of the Convention is not extradited to the State party in whose territory the offence was committed, the decision to prosecute shall be taken in accordance with the law of the Russian Federation. The procedures governing legal proceedings that are laid down in the RSFSR Code of Criminal Procedure are uniform and mandatory for all cases and for all courts, procuratorial bodies, and pretrial investigations and initial inquiries (RSFSR Code of Criminal Procedure, art. 1).

Article 8

74. The Russian Federation applies the following criteria when deciding matters of extradition.

75. When it ratified the 1957 European Convention on Extradition, the Russian Federation entered a reservation concerning the possible refusal of extradition "if there exist serious grounds to believe that the person whose extradition is requested was or will be subjected in the requesting State to torture or other cruel, inhuman or degrading treatment or punishment" (European Convention on Extradition, Additional Protocol and Second Additional Protocol Thereto (Ratification) Act, art. 1, para. 1 (b)).

76. In the light of this reservation and the obligations devolving on the Russian Federation under article 3 of the Convention, the Office of the Procurator-General of the Russian Federation, upon receipt of an extradition request, ascertains the general political situation in the requesting State, which may give some clue as to whether the person facing extradition might subsequently be tortured.

77. In accordance with article 11 of the 1957 European Convention on Extradition, which was ratified by the Russian Federation on 25 October 1999, extradition may be refused if the offence referred to in the extradition request is a capital crime in the requesting Party, whereas the requested Party does not provide for or apply this form of punishment.

78. In the light of this provision of the Convention and the commitment to abolish the death penalty which the Russian Federation assumed when it became a member of the Council of Europe, and pursuant to its moratorium on this form of punishment, the Procurator-General's Office, when deciding on extradition cases involving offences which are not capital crimes under Russian law but which fall into this category under the law of the requesting State, seeks assurances from the latter that the person facing extradition will not subsequently be put to death.

79. It should be noted that most persons who have committed serious crimes are extradited at the request of Ukraine and Azerbaijan, both of which have declared a moratorium on the use of the death penalty.

80. Extradition statistics reveal that, in the period from 1997 to June 2000 inclusive, the Procurator-General's Office granted 3,444 applications to extradite for the purpose of criminal prosecution or to ensure execution of a sentence. Extraditions were made to CIS countries, the Baltic States, the Czech Republic, Germany, Bulgaria, China and Mongolia.

81. In all, 1,729 extradition requests were turned down during the same period. The grounds for refusing extradition were as follows: the person claimed was a Russian citizen; the act referred to in the request was not punishable under Russian law; the prosecution was brought on political grounds, etc. In no case was the refusal to extradite motivated by the fact that the person claimed might be subjected to torture, cruelty or unauthorized investigative methods in the requesting State.

Article 9

82. Since the consideration in 1996 of the second periodic report of the Russian Federation regarding its compliance with the Convention, the Russian Government has concluded treaties

on judicial assistance and legal relations in civil and criminal cases with the following countries: the Islamic Republic of Iran (1997), Zaire (1997), Mexico (1997), Colombia (1997), Mozambique (1997), Mali (1997), Tunisia (1997), Madagascar (1997), Cuba (1997) and Egypt (1997).

83. In October 1999 the Russian Federation ratified the European Convention on Mutual Assistance in Criminal Matters (20 April 1959) and the Additional Protocol thereto, both of which it signed in Strasbourg on 7 November 1996.

84. Pursuant to this development, a section has been incorporated into the draft code of criminal procedure of the Russian Federation on procedures for cooperation between courts, procurators, investigators and bodies conducting initial inquiries, on the one hand, and the corresponding foreign agencies and officials, on the other, concerning judicial assistance in criminal cases, extradition of offenders, and extradition of convicted persons to serve their sentence in their home country.

Article 10

85. The Government of the Russian Federation attaches very high priority to education and information regarding the prohibition of torture. For example, efforts are being made to improve the quality of training for specialist personnel in the Russian penal correction system and familiarize them with the experience of west European penitentiary systems, including within the framework of the Joint Programme of the European Commission and the Council of Europe to improve human rights legislation, promote social cohesion and develop democracy in the Russian Federation. The Council of Europe and the European Commission have been implementing joint programmes for the Russian Federation since 1996. A fourth Joint Programme agreement was signed at the end of 1999. The main objectives of this programme are:

Cooperation in publicizing human rights issues;

Training of judges;

Development of the institution of human rights commissioner in the constituent entities of the Russian Federation;

Training of young parliamentarians and federal and regional officials.

86. Plans are also afoot to make better use of the media to raise the level of legal awareness among the population at large. These measures will be partially funded through an agreement with the World Bank that came into force in September 1996 whereby the Bank agreed to provide a loan to support legal reform in the Russian Federation.

87. The Russian Federation's international obligations regarding the prevention of torture are also reflected in the training modules "International Law" and "Safeguarding Human Rights in the Work of Internal Affairs Agencies" that are taught in educational establishments of the Ministry of Internal Affairs.

88. In its concluding observations, the United Nations Committee against Torture recommends expediting the training of medical personnel in penitentiaries as regards their legal obligations and the rights of suspects and detainees. According to information received from the Ministry of Justice's Central Department for Penal Correction, medical officers in penitentiaries attend classes twice a month on providing medical care to detainees and prisoners.

Article 11

89. Article 22 of the Constitution, which states that pre-trial detention or custody is only permitted pursuant to a judicial decision, guarantees respect for the law. Pending such a decision, no one may be detained for longer than 48 hours.

90. It should be noted, however, that under article 6 of section II (Final and Transitional Provisions) of the Constitution of the Russian Federation, "Until such time as the law on criminal procedure of the Russian Federation is brought into line with the provisions of this Constitution, the former procedure for the arrest, custody and detention of persons suspected of committing offences shall be retained", i.e. pending the adoption of a new Code of Criminal Procedure, procuratorial consent is required for a person to be held in pre-trial detention.

91. Article 14 of the Suspects and Accused Persons (Custody) Act (No. 103-FZ) of 15 July 1995 states that suspects and persons charged with offences may be held in custody for the period specified in the Code of Criminal Procedure. Under the law of criminal procedure of the Russian Federation, the legality and validity of the use of pre-trial detention as a preventive measure and the legality and validity of the prolongation of custody may be appealed in a court of law.

92. Presidential Decree No. 1226 of 14 June 1994 authorized the holding in custody for up to 30 days as a preventive measure of persons suspected of committing an offence as members of an organized criminal gang. This procedure was voided by a presidential decree of 14 June 1997.

93. The Code of Criminal Procedure and the Suspects and Accused Persons (Custody) Act, both of which came into force in 1997, provide for an extension of the rights of remand prisoners and convicted persons and envisage differentiated and humane arrangements for custody and the serving of sentences. The minimum cell area has been set at 4 m^2 per person; female suspects and accused are permitted to keep their children (up to age three) with them; and persons detained in remand units are entitled to additional amenities and health services on a paying basis.

94. According to the latest version of article 11 of the RSFSR Code of Criminal Procedure, the governor of a place of detention is authorized to order the release of a suspect or accused person upon expiry of the statutorily defined period of custody or pre-trial detention, provided no further decision has been made regarding selection of a preventive measure. Formerly only courts and procurators had this power. On 11 December 1996, significant amendments were made to article 97 (Duration of Custody) of the RSFSR Code of Criminal Procedure. The provision stating that the time taken by the accused and his counsel to familiarize themselves

with the case-file should not be included in the period spent in custody was removed, and the statutory limit and grounds for the prolongation of custody by a procurator or a judge were defined.

95. Moreover, by its ruling No. 167-0 of 25 December 1998, the Constitutional Court confirmed that any decision to prolong the custody of an accused person who has finished acquainting himself with his case-file is unconstitutional.

96. The principles of legality and humanism form part of the law on the execution of criminal penalties. This is amplified in article 4, paragraph 3, of the Code for the Execution of Criminal Penalties of the Russian Federation, where it is stated that Russian legislation for the execution of criminal penalties and its application must be based on strict observance of safeguards against torture, violence and other cruel or degrading treatment of prisoners.

97. In the Code for the Execution of Criminal Penalties, article 12 (Fundamental rights of convicted persons) stipulates that such persons are entitled to be treated courteously by the staff of the institution where the penalty is being executed. They may not be treated cruelly or in a degrading manner. The same article prohibits any medical or other experiments on convicted persons which might endanger their life and health, regardless of whether they have given their consent.

98. Pursuant to Presidential Decree No. 1100 on reforming the penal correction system of the Ministry of Internal Affairs (8 October 1997) and Decree No. 904 on the transfer of the penal correction system of the Ministry of Internal Affairs to the jurisdiction of the Ministry of Justice of the Russian Federation (28 July 1998), all institutions and agencies of the penal correction system are now under the authority of the Ministry of Justice. The Russian Federation has thus complied with the recommendations of the Committee of Ministers of the Council of Europe on standard European penitentiary rules.

99. The transfer of the penal correction system to the jurisdiction of the Ministry of Justice is a precondition for root and branch reform. A new draft outline for the reorganization of the penal correction system in the period to 2005 has been prepared. This envisages, inter alia:

(a) Policy adjustments in the fight against crime; further humanization of the criminal law and legislation dealing with criminal procedure and the execution of criminal penalties; expansion of the range of criminal penalties and preventive measures available as alternatives to imprisonment or custody;

(b) Establishment of conditions and procedures for the execution of penalties which ensure social and legal protection for convicted persons, suspects and accused persons and guarantee citizens' constitutional rights to personal safety, protection of health and property, and education.

100. To this end, a number of proposals have been submitted to the legislative and executive branches of Government with a view to amending and supplementing existing legislation. Government Decision No. 760 on measures to guarantee conditions for the custody of persons in remand units and prisons of the penal correction system of the

Ministry of Internal Affairs (27 June 1996) was prepared and adopted with input from the law-enforcement agencies. On 19 May 2000 the State Duma of the Federal Assembly adopted at first reading a bill to amend and supplement certain legislative acts of the Russian Federation pertaining to the penal correction system. The adoption of this statute should make it possible to cut by 250,000-300,000 the number of persons in pre-trial detention and improve accommodation and services for suspects and accused persons.

101. The Ministry of Justice has embarked on a policy of making institutions of the penal correction system transparent to international human-rights organizations. Delegations from the International Committee of the Red Cross (ICRC) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment are free to visit correctional institutions and remand prisons of the penal correction system.

102. Institutions of the penitentiary system are partially exempt from income tax, which will help to stimulate prison industries.

103. The checks by the Office of the Procurator-General of compliance with the law at places of detention, have uncovered numerous irregularities and led to the release of persons illegally detained in the following types of facility:

	1997	1998	1999	January-June 1999	January-June 2000
Special cells	-	993	577	271	279
Punishment cells	337	1 065	882	423	433
Punishment cells in remand prisons	-	145	150	75	68
Disciplinary units	994	12	15	8	8

104. The Constitutional Court has declared unconstitutional the decision to suspend payment of earned pension to convicted persons for the duration of their detention (since 1 July 1997 convicted persons serving a custodial sentence have enjoyed the same pension entitlements as everyone else). It has also declared unconstitutional the rules in the Housing Code whereby citizens forfeit the right to housing in the event of a conviction entailing a custodial sentence of more than six months.

105. On the recommendation of the President of the Russian Federation, the State Duma decided to proclaim an amnesty on 24 December 1997. This amnesty affected approximately 267,000 people and was an act of humanity on the part of the State with respect to certain categories of suspects, accused persons and criminals.

106. On 26 May 2000 the State Duma decided to proclaim an amnesty in connection with the fifty-fifth anniversary of victory in the Great Patriotic War of 1941-1945. This amnesty will alleviate to some extent the conditions of detention of remand prisoners and convicted persons. As of 1 October 2000 more than 168,000 people had been released from places of detention.

107. The Court Bailiffs Act (see para. 15 of this report) and the Enforcement Proceedings Act, both adopted in 1997, also have some bearing on this question.

108. The Enforcement Proceedings Act (art. 44) established the grounds and conditions for the application of coercive measures to enforce judicial acts and acts of other agencies in respect of the seizure of property, and listed these measures (art. 45). The Act also outlined the judicial protection of the rights of the creditor, the debtor, and other parties in the execution of enforcement actions (chap. XI).

Article 12

109. The objectives of legal proceedings in the Russian Federation are to bring crimes to light as promptly and comprehensively as possible, to determine the guilty parties and fix a just punishment, and to prevent the criminal prosecution of innocent persons. The criminal law of the Russian Federation serves as the basis for the activities of the law-enforcement agencies and the courts.

110. These points are reflected to the full in the draft code of criminal procedure of the Russian Federation. For example, article 6, paragraph 2, of the draft code stipulates that the procedure for prosecuting criminal cases must ensure protection against unlawful encroachments on the rights and freedoms of individuals and citizens, and that an innocent person who is wrongly indicted or convicted must be immediately and fully rehabilitated. Actions or decisions in the course of criminal proceedings which humiliate or degrade an individual or endanger the life or health of a party to the proceedings are prohibited (draft code, art. 10, para. 1). No party to the proceedings may be subjected to violence or cruel or degrading treatment of any kind (art. 11).

Article 13

111. The implementation of the requirements of article 13 of the Convention is guaranteed in the Russian Federation by article 46 of the Constitution, which states that:

> Everyone is guaranteed judicial protection of his or her rights and freedoms;
>
> Decisions and actions (or inaction) by Government bodies, local authorities, voluntary associations and officials may be appealed in the courts of law;
>
> Everyone has the right, in accordance with the international treaties of the Russian Federation, to have recourse to inter-State bodies for the protection of their human rights and freedoms, subject to exhaustion of all existing domestic remedies.

112. Furthermore, article 302, paragraph 2, of the Criminal Code, which criminalizes coercion to testify involving the use of force, bullying or torture, is specifically intended to protect the inviolability of the person as guaranteed under the Constitution of the Russian Federation and the Convention against Torture.

113. The conditions of detention of suspects and accused persons and procedures to safeguard their rights and legitimate interests, including the right to file complaints, are regulated by the Suspects and Accused Persons (Custody) Act, which was adopted by the State Duma on 15 July 1995.

114. The law of criminal procedure lays down a defined procedure for the consideration of omplaints lodged by persons in custody. Thus, in accordance with article 218 of the RSFSR Code of Criminal Procedure, the person conducting the initial inquiry or the investigator must forward any complaint regarding their actions, together with explanations, to a procurator within 24 hours. Under article 219, the procurator has 72 hours from receipt of the complaint to examine it and inform the complainant of his conclusions. If the procurator dismisses the complaint, he must state why it was not upheld.

115. Article 21 of the Suspects and Accused Persons (Custody) Act states that complaints about the actions or decisions of a court, a person conducting an initial inquiry, an investigator or a procurator that suspects or accused persons submit to the administration of a place of detention must be forwarded in accordance with the procedure laid down in the RSFSR Code of Criminal Procedure no later than three days after its submission.

Complaints regarding the use of unlawful investigative methods (information supplied by the Statistics Department of the Office of the Procurator-General)

	1997	1998	1999	January-June 1999	January-June 2000
Number of complaints	362	6 334	7 109	3 696	4 087
Number of complaints upheld	341	442	332	204	160

Legal irregularities arising from the use of unlawful investigative methods during the investigation or initial inquiry phases in agencies of the Ministry of Internal Affairs or the Federal Tax Police Service

	1997	1998	1999	January-June 1999	January-June 2000
Number of procuratorial recommendations made in connection with breaches of the law	1 690	747	776	308	334
Number of employees disciplined pursuant to procuratorial recommendations	-	591	534	211	213
Number of cases referred to the courts for criminal prosecution of employees for official misconduct	-	136	165	73	108

116. The Committee against Torture has expressed concern about communications alleging widespread human rights abuses in the Chechen Republic of the Russian Federation and the inability of the authorities to put a stop to these abuses. To date the Office of the Procurator-General has made considerable efforts to restore constitutional legality in the territory of the Chechen Republic, for example by re-establishing procuratorial bodies. This year has witnessed the establishment of a Procurator's Office at the republic level and of 13 city and district procurator's offices. It should be noted that local people are being actively recruited to law-enforcement agencies in Chechnya. Thus over 40 per cent of procuratorial staff are citizens of Chechen nationality.

117. Procuratorial bodies are focusing their attention on preventing breaches of the law by military personnel. All reports of irregularities committed by the military, including reports emanating from human-rights organizations and the media, are looked into. There is constant interaction with international human-rights organizations and the ICRC, and international humanitarian law is being publicized among the troops. The task of ensuring that the military operates within the law has been discussed at meetings with a delegation led by the United Nations High Commissioner for Human Rights and delegations from the non-governmental human-rights organizations Human Rights Watch and the International Federation of Human Rights Leagues.

118. Checks carried out by the Office of the Procurator-General have revealed that, in the first six months of 2000, a total of 16 crimes against civilians were recorded in Chechen territory (six murders, four cases of causing death by negligence, one rape and two cases of theft). Four criminal cases have already been referred to the courts.

119. Since the start of the counter-terrorist operation, the agencies of the Military Procurator's Office have instituted and handled 729 criminal cases against military personnel and cases involving the death of military personnel at the hands of armed criminal gangs. In 139 cases the preliminary investigation has been concluded and the matter has been referred to the courts for examination of the merits. In 25 cases criminal proceedings have been instituted against military personnel for offences against local people.

120. In pursuance of the Committee's recommendations, Presidential Decree No. 364 of 17 February 2000 established the post of special representative of the President for human and civil rights and freedoms in the Chechen Republic, and Mr. V.A. Kalamanov has been appointed to this position. The special representative and his subordinates receive communications and statements from Chechen citizens with a view to realizing their rights and freedoms. A total of 5,689 applications had been lodged as of 1 July 2000.

Article 14

121. With reference to the constitutional provision concerning the right of every citizen to seek redress from the State for injury sustained as a result of unlawful actions by government bodies or officials, there has been elaborated and incorporated into the draft code of criminal procedure of the Russian Federation that was adopted by the State Duma at first reading, a new

chapter concerning the procedure for seeking compensation in the event of unlawful actions of a court or bodies conducting pre-trial proceedings in a criminal case. The rules contained therein state on what grounds and in which circumstances the right of redress and the procedure for compensation shall apply.

122. As to the question of human rights abuses during the armed conflict in Chechnya, reference should be made to the Decision of the Constitutional Court of 31 July 1995 regarding verification of the constitutionality of a number of presidential decrees on measures to re-establish constitutional legality and law and order in the territory of the Chechen Republic. This decision states that, pursuant to articles 52 and 53 of the Constitution and to the International Covenant on Civil and Political Rights (art. 2, para. 3), victims of any wrongdoing, crime or abuse of authority should be provided with effective remedies and compensation for injury.

Article 15

123. Article 20, paragraph 3, of the RSFSR Code of Criminal Procedure categorically prohibits the extortion of testimony from accused persons or other parties to proceedings by means of violence, threats or other unlawful measures.

124. In hearing cases, courts decide not only on the relevance, sufficiency and reliability of evidence, but also on its admissibility. Testimony obtained by unlawful means, i.e. through the use of torture or other cruel treatment, has no legal value and cannot be used as evidence. This provision is enshrined in law in article 50 of the Constitution and article 69 of the RSFSR Code of Criminal Procedure, which state that in the administration of justice no evidence obtained in violation of federal law shall be admissible. Evidence obtained contrary to law shall be deemed to have no legal value and cannot be used as the basis of an indictment or to substantiate the facts of a case.

125. Claims by defendants, victims or witnesses that they have been coerced into giving testimony or by experts that they have been coerced into forming a particular conclusion by means of threats, blackmail, violence, bullying or torture must be verified by a court, as such action by investigators or other persons conducting an initial inquiry constitutes an offence under article 302 of the CCRF.

126. As a result of the recent introduction of jurors into Russian courts, investigative bodies now exercise greater care in assembling evidence with a view to seeking an indictment.

127. The objective and unbiased examination of cases by courts using the jury system is greatly facilitated by the application of more rigorous standards regarding the exclusion from proceedings of evidence obtained by unlawful means.

128. Article 435 of the RSFSR Code of Criminal Procedure stipulates that a judge may not acquaint jurors with evidence obtained contrary to law and is obliged to exclude such evidence from the proceedings. The use of inadmissible evidence at a trial can result in the quashing of the verdict.

Article 16

129. Article 16 makes it incumbent on States parties to the Convention to undertake to prevent in any territory under their jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. Russia's practical measures of relevance to this article are described in detail in the sections of the present report pertaining to paragraphs 1 and 4 of the Convention.